

**COMMONWEALTH OF KENTUCKY  
KENTUCKY BOARD OF TAX APPEALS  
FILE NO. K04-R-16**

**AUTOZONE DEVELOPMENT CORPORATION**

**APPELLANT**

**v.**

**ORDER NO. K-19382**

**FINANCE AND ADMINISTRATION CABINET  
DEPARTMENT OF REVENUE  
COMMONWEALTH OF KENTUCKY**

**APPELLEE**

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**FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL  
ORDER**

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This matter is before the Board on the motions for judgment as a matter of law submitted by both AutoZone Development Corporation and the Department of Revenue. The parties have agreed that there are no disputed facts in this case and have provided the Board with memoranda setting forth their legal arguments. The Board, having reviewed the memoranda and being otherwise sufficiently advised, hereby states as follows:

**FINDINGS OF FACT**

1. AutoZone is a Nevada corporation and is qualified as a real estate investment trust pursuant to Sections 856 through 859 of the United States Internal Revenue Code.
2. AutoZone owns and leases land and buildings within the limitations prescribed by Internal Revenue Code § 856.

3. As part of its activities, AutoZone owns or leases land and buildings for the operations of AutoZone, Inc. and subsidiaries.
4. Some of the land and building owned or leased by AutoZone are located in Kentucky.
5. AutoZone began doing business in Kentucky in August 1995.
6. AutoZone timely filed its 1995-1997 Kentucky Corporation Income Tax Returns.
7. On each of its returns, AutoZone took a deduction for dividends paid, which is authorized by KRS§ 141.010(13) and Internal Revenue Code § 857(b)(2)(B).
8. In a review of AutoZone's returns, the Department of Revenue disallowed the deduction for dividends paid, claiming the deduction not allowed by KRS § 141.010(13), and assessed additional income taxes as a result of the disallowance.
9. The additional assessments against AutoZone amount to \$663,772.00 (plus interest, fees and penalties).
10. The Department affirmed these assessments on October 26, 2004 in Final Ruling No 2004-33.
11. AutoZone appealed the Departments Final Ruling by timely filing a Petition of Appeal with Board.

### **CONCLUSIONS OF LAW**

1. A real estate investment trust, such as AutoZone, begins by computing its federal taxable income in the same manner as any other corporation.

2. Pursuant to Internal Revenue Code § 857(b)(2)(B), real estate investment trusts are allowed a “dividends paid deduction”, as that phrase is defined in Internal Revenue Code § 561.
3. In relevant part, Internal Revenue Code § 561 defines the “dividends paid deduction “ as “the dividends paid during the taxable year”.
4. For 1995-1997, KRS § 141.040 imposes income tax on all corporations with property or payroll in Kentucky.
5. The tax is payable on the taxable “net income” of the corporation. KRS § 141.040(1).
6. “Net income” is defined as KRS § 141.010(13).
7. KRS § 141.010(13) defines “net income as follows:  
  
“Gross income” as defined in subsection (12) of this section, plus the deduction allowed by KRS § 141.0202 and minus all the deductions from gross income allowed corporations by Chapter 1 of the Internal Revenue Code and as modified by KRS § 141.0101 [relating to depreciation], except the following: [modifications not relevant herein]. (Emphasis added).
8. KRS § 141.010(13) requires that if a deduction from gross income is allowed under Internal Revenue Code Chapter 1 and it is not later disallowed or modified by Kentucky statute then it must be allowed as a deduction for Kentucky corporation income tax purposes.
9. The “dividends paid deduction” is included in Chapter 1 of the Internal Revenue Code, and it is not later disallowed or modified by Kentucky statute.
10. Therefore, the “dividends paid deduction is an allowable deduction for Kentucky corporation income tax purposes.

**ORDER**

For the reasons set forth above, the assessments by the Department of Revenue against AutoZone for the tax years 1995-1997 (including all interest, fees and penalties) are vacated and set aside.

This is a final and appealable order. All final orders of this agency shall be subject to judicial review in accordance with the provisions of KRS Chapter 13B. A party shall institute an appeal by filing a petition in the Circuit Court of venue, as provided in the agency's enabling statutes, within thirty (30) days after the final order of the agency is mailed or delivered by personal service. If venue for appeal is not stated in the enabling statutes, a party may appeal to Franklin Circuit Court or the Circuit Court of the county in which the appealing party resides or operates a place of business. Copies of the petition shall be served by the petitioner upon the agency and all parties of record. The petition shall include the names and addresses of all parties to the proceeding and the agency involved, and a statement of the grounds on which the review is requested. The petition shall be accompanied by a copy of the final order.

A party may file a petition for judicial review only after the party has exhausted all administrative remedies available within the agency whose action is being challenged, and within any other agency authorized to exercise administrative review.

A petition for judicial review shall not automatically stay a final order pending the outcome of the review, unless:

- (a) An automatic stay is provided by statute upon appeal or at any point in the administrative proceedings;
- (b) A stay is permitted by the agency and granted upon request; or

(c) A stay is ordered by the Circuit Court of jurisdiction upon petition.

Within twenty (20) days after service of the petition of appeal, or within further time allowed by the Circuit Court, the Kentucky Board of Tax Appeals shall transmit to the reviewing court the original or a certified copy of the official record of the proceeding under review in compliance with KRS 13B.140(3).

**DATE OF ORDER  
AND MAILING: October 10, 2005**

**KENTUCKY BOARD OF TAX APPEALS  
FULL BOARD CONCURRING**

**NANCY MITCHELL  
CHAIR**